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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/21

SPONSOR SHPAC LAST UPDATED HB

SHORT TITLE Citizen Substitute Care Review SB 242/SHPACS

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 209 and Senate Bills 97, 196, 257 and 278.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (NMAG)
 Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 State Personnel Board (SPO)

SUMMARY

Synopsis of Bill

The Senate Health and Public Affairs Committee substitute for Senate Bill 242 makes numerous changes to the Citizen Substitute Care Review Act, part of the Abuse and Neglect Act (Section 32A-4 NMSA 1978). The Citizen Substitute Care Review process provides external evaluation and recommendations to CYFD in its child protection work. In brief, this bill does the following:

- (1) Updates the purpose of the act;
- (2) Clarifies that state law must comply with the federal Child Abuse Prevention and Treatment Act (CAPTA);
- (3) Adds definitions;
- (4) Amends the section on Substitute Care Advisory Council (SCAC) members, compensation, and responsibilities;
- (5) Repeals current sections 5 and 6 which discuss substitute care review boards (SCRB) make up and review of cases;
- (6) Provides specifics of a volunteer board to review child abuse and neglect cases, and;
- (7) Adds multiple sections more clearly outlining SCAC administration and staffing, legal

representation, and grievances, as well as substitute care board membership, rules, case reviews, access to records and confidentiality.

The following table lists the sections of the bill in more detail:

Section of this bill	Provisions	Section of statute modified
1	One of the 19 parties authorized to review records pertaining to a party to an abuse or neglect proceeding is changed to eliminate members of local substitute care review boards and replaces them with members of the substitute care council.	Section 32A-4-33 NMSA 1978 (Confidentiality)
2	Repurposes the Citizen Substitute Care Review Act (CSCRA) from studying individual children to studying policy, practice and procedure of CYFD itself to comply with federal requirements.	Section 32A-8-2 NMSA 1978
3	Establishes definitions, including “board” as a volunteer substitute care review board; “case” as a child undergoing an abuse or neglect proceeding, “public member” as a person appoint by the governor, and “substitute care” as care in a setting other than with one or both birth parents.	New
4	While the SCAC would be administratively attached to the Regulation and Licensing Department, as before, it is to perform independently of any state agency, including of CYFD or RLD. The council would consist of ten rather than nine members, adding one from the Early Childhood Education and Care Department, and redefining the public members, and adding a non-voting member from CYFD. Members would be entitled to per diem and mileage; meetings would occur at least quarterly. The council could establish work groups and contract with others as needed to fulfill its functions, which would include establishing its procedures, to comply with the state’s CSCRA and the federal Child Abuse Prevention and Treatment Act (CAPTA), but would no longer involve substitute care review boards or the determination of policies as regards individuals. It will report at least annually to the governor, the Legislature and CYFD and AOC, making recommendations for improvement at state and local levels.	Section 32-8-4 NMSA 1978
5	Provides for a director, gives her/his qualifications and duties, including hiring staff and specifying their qualifications if providing professional services and applying for grants and gifts.	New
6	The attorney general is to provide advice to the council.	New
7	Establishes a grievance procedure guided by the council to be followed, requires CYFD to respond within ten	

	days. Disposition of grievances not meeting criteria for review are to be reviewed by an appropriate entity. There is to be no retaliation against those filing grievances. Results of grievance investigations are to be transmitted to CYFD.	
8	The council is to establish rules for volunteer members and their training.	New
9	Volunteer members are to be formed into substitute care review boards to review cases. Notice of court cases to be reviewed must be given to parties to the case, including to persons needing notice according to the Indian Child Welfare Act in the case of an Indian child. CYFD must respond to reviews within ten days. Council staff and CYFD are to meet at least quarterly to develop mutually agreed-upon solutions to problems detected in the case reviews.	New
10	Council staff is granted access to any records of a case necessary for carrying out its duties, with CYFD required to facilitate this access.	New
11	Information provided to or coming from council members is not subject to the Inspection of Public Records Act (IPRA). Identity of those filing of a grievance is to remain confidential; members of staff, the council, or a board must maintain information confidentially unless written or immediately-documented oral permission for release is given.	New
12	Two sections are repealed: <ul style="list-style-type: none"> • 32-8-5, dealing with substitute care review boards, and • 32-8-6, dealing with substitute care review board reviews of cases. 	Sections 32A-8-5 and 32A-8-6 NMSA 1978

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 242.

CYFD believes that it will be able to make the changes indicated in the bill using current resources: “Any fiscal impact to CYFD regarding staff time responding to potential increases in grievances will be absorbed by current resources. CYFD currently supports the council’s CAPTA functions through federal Title IV-E reimbursements and at variable rates based on the number of individual case reviews performed. The council also receives other state general funding to support its staffing and resource needs. CYFD does not anticipate any significant fiscal impact arising from the expansion of the Council’s oversight.”

SIGNIFICANT ISSUES

NMAG states that it has already been providing legal counsel to the SCRC for more than a year.

CYFD indicates the following regarding the need to comply with provisions of the federal Child Abuse Prevention and Treatment Act (CAPTA):

This bill broadens substitute care advisory council oversight of CYFD by the council, as intended by its creation by the Federal law CAPTA. This bill additionally expands on CAPTA's intentions by creation of the grievance procedure through the council; this expansion provides for a neutral outside entity to assist grieving persons to have a more objective look at the case decisions.

The 1996 reauthorization of CAPTA required review panels made up of volunteer members to evaluate state child welfare agencies and make recommendations for improvements in child protective services. The review panels evaluate the child welfare agency by: (1) examining the policies, procedures and practices of the child welfare agency; and, (2) reviewing specific cases, where appropriate. CAPTA requires the review panels to prepare an annual report that summarizes the activities of the panels and makes recommendations to improve the child protective system and submit it to the State and the public. In New Mexico, the functions mandated by CAPTA are carried out by the substitute care advisory council, including the substitute care review boards of volunteer members that, facilitated by council staff, review designated child welfare cases.

As the state child welfare agency, CYFD has performance measures regarding safety, permanency and well-being of children in its care pursuant to the Abuse and Neglect Act, and it is CYFD's performance that the substitute care advisory council is evaluating and to which it is making recommendations for improvements.

The bill adds important provisions, including the requirement that CYFD provide a written response to the council's annual report and recommendations. This response is not only a federal requirement under CAPTA but also another opportunity for CYFD to provide the public with a transparent window into its operations, mandates, limitations, and continuous improvements.

AOC makes note of the confidentiality requirements in the bill: "Abuse and Neglect legal matters are sequestered, and not open to the public in the manner that most legal cases are. Abuse and Neglect court records are confidential, and the proposed modifications in SB242 clarify SCAC and SCRB access to records to ensure the reviews are comprehensive, that the recommendations are fully-informed, and that case information is kept confidential."

The State Personnel Office (SPO) states that the required qualifications for director and staff of the council conflict with existing SPO categories, and that some current council staff would not meet the requirements specified in the bill.

RELATIONSHIP with HB209/SB278 on the state's Indian Child Welfare Act, with SB97 on guardianship changes, with SB197 on a task force to reform the Children's Code, and with SB 257 on delinquency placements.

TECHNICAL ISSUES

SPO recommends that the council staff qualifications be deleted from the bill, as they conflict with current categories and may exclude some current staff members.

AMENDMENTS

CYFD requests the following amendments to Senate Bill 242:

- Amend Section 2, 32A-8-2, to add a reference to the (federal) Child Abuse Prevention and Treatment Act, from which the citizen review panel requirements come.
- Amend Section 3, to delete the definition of “county office manager” and delete the reference to county office manager in Section 9 and replace it with “the department.”
- Amend the definition of “grievance” to clarify that it “means a complaint received in accordance with council rules.”
- Amend the definition of “identified child” to provide that the child is receiving “protective” services from CYFD and deleting the provision that the child may be in CYFD custody due to a juvenile justice proceeding.
- Amend the definition of “volunteer member” to add “been appointed and” before “met eligibility requirements.”
- Amend the definition of “substitute care advisory council” in Section 4, 32A-8-4(A), to mirror the language of Section 9-1-7, stating, “The council shall exercise its functions independently and not under the control of the department or the regulation and licensing department” (with “the department” here referring to CYFD), since the council is administratively attached to RLD as described in Section 9-1-7.
- Amend Section 4, 32A-8-4(G) to substitute “once every three months” instead of “quarterly” to clarify the required meeting frequency under CAPTA.
- Amend Section 3, 32A-8-4(I) to add the requirement that the council must adopt, publish and file rules in accordance with the State Rules Act.
- Amend Section 3, 32A-8-4(J) to require the council to post its periodic reports on a publicly available website in addition to sending it to the governor, the legislature, CYFD and AOC, and to delete “and other persons, organizations or agencies deemed appropriate.”
- Amend Section 5(A) to clarify that the director shall be employed in accordance with the Personnel Act, that the staff employed by the director on behalf of the council are hired in accordance with the Personnel Act and that the staff are hired to support the purposes of the Citizen Substitute Care Review Act rather than directly carrying out those purposes. Further, remove from Section 5(A)(4) “and fix compensation of the staff” as unnecessary verbiage and clarify in sub-subsection (6) that grants, gifts, and bequests are accepted on behalf of the council.

- Amend Section 7 on rules regarding the council’s process for accepting and processing grievances to: replace “submitted to council staff” in subsection (A) with “in accordance with council rules” (for clarity); clarify that the council shall adopt, publish and file rules in accordance with the Rules Act; clarify in subsection (3) that it is referring to procedure for the referral of grievances that do not meet the criteria established by the council to an appropriate entity; add that the council will establish investigation or assessment procedures
- Amend the parallel provisions in Section 7 and Section 9 regarding departmental response to a grievance report to require CYFD to indicate its position on the council’s recommendations to broaden CYFD’s position beyond “agree” or “disagree;” and amend the provisions regarding council requests for meetings to require that council staff and CYFD designee(s) will meet no less than once every three months to discuss trends observed and develop mutually agreeable solutions.
- Amend the whistleblower protection language in Section 7 to clarify that the department and its agents or contractors shall not discharge, discriminate against in any manner or retaliate against an individual who in good faith submits a grievance.
- Amend Section 10 on access to records to delete the provision that CYFD not discharge, discriminate, or retaliate against an employee, volunteer or contractor who communicates with the council about a grievance as those actions are covered by the Whistleblowers Act.

LAC/al/sb